DOCUMENT RESUME

ED 429 756 RC 021 906

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TITLE The IDEA 1997 Accommodation, Modification Plans and Related Services Compliance Requirements for Rural Schools According to Recent Court Decisions.
PUB DATE 1999-03-00
NOTE 8p.; In: Rural Special Education for the New Millennium. Conference Proceedings of the American Council on Rural Special Education (ACRES) (19th, Albuquerque, New Mexico, March 25-27, 1999); see RC 021 888.
PUB TYPE Information Analyses (070) -- Speeches/Meeting Papers (150)
EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Compliance (Legal); *Court Litigation; Disabilities; Educational Legislation; Elementary Secondary Education; Federal Legislation; Rural Education; *Rural Schools; *School Responsibility; *Special Education; *Student Rights
IDENTIFIERS *Individuals with Disabilities Education Act; Related Services

ABSTRACT

Rural schools do not receive special compliance exemptions under the Individuals with Disabilities Education Act (IDEA). This paper examines the responsibilities of schools to students with disabilities, as outlined in IDEA regulations and court decisions, as well as implications for rural schools with limited funding and resources. Issues discussed include the proportion of federal funds intended for local schools, oversight of state agency compliance with federal regulations concerning funding distribution, the IDEA definition of a child with a disability, age requirements for identification and provision of special education and related services, court decisions about when a school's responsibility to a student ends, statutory categories of disability, the unconditional nature of the IDEA requirement of a free appropriate education for all students with disabilities, development of state-level child identification systems, development of state standards for special education, the state's responsibility to ensure appropriate use of federal and state special education funding, funding changes in the 1997 amendments to IDEA, presumption that children with and without disabilities will be educated together wherever possible, availability of a continuum of alternative placement options, qualitative standards, provision of special services unavailable in the school district, provision of extensive accommodations, and exclusion of medical services. Contains 16 references. (SV)

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THE IDEA 1997 ACCOMMODATION, MODIFICATION PLANS AND RELATED SERVICES COMPLIANCE REQUIREMENTS FOR RURAL SCHOOLS ACCORDING TO RECENT COURT DECISIONS

ED 429 756

Rural schools do not receive special compliance exemptions under the Individuals with Disabilities Education Act (IDEA). The purpose of the IDEA is to

> assure that all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist states and localities to provide the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities. (IDEA, 20 U.S.C. § 1400(c))

The purpose of the IDEA was to provide federal funding assistance to states in meeting the educational needs of students with disabilities. However, the U.S. Supreme Court interpreted the IDEA in much broader terms than the enactment of a funding statute. The Court, in *Honig v. Doe*, held that disabled students hold enforceable substantive rights to public education. Importantly, the Court conditioned federal financial assistance upon states' compliance with substantive and procedural goals of the Act (*Honig v. Doe*, 1988, p. 597).

Rural schools must meet the substantive and procedural goals of the IDEA. Therefore, rural schools would be well served in knowing the particularized goal requirements for each disabled student in their district. Moreover, individual state qualitative standards for the provision of special education and related services to disabled students apply to each school district, or local education agency (LEA), within a given state. School districts do not have equal resources with which to meet those qualitative standards. Compliance with state qualitative standards may be more problematic in rural schools that tend to have limited funding and resources for meeting the educational needs of disabled students.

Court decisions involving the free and appropriate education (FAPE) of disabled students provide guidance for LEA decision-makers on the matter. However, initial guidance is first found in the federal statute and particular state statutes.

Rural school organizations and associations within each state should monitor their own state's special education agency. The IDEA requires that 75% of the federal funds received by the states be directed to the local schools. 25% may be used at the state level. Therefore, three-fourths of the federal funds should flow to the local school districts. The amount of flow-through funds given to a LEA is in proportion to the district's contribution to the state total of students in special education.

The size and efficiency of a state's agency beauracracy may affect the amount of funds and resources available to the state's LEAs. Those effects become magnified for rural schools.

State agencies may set aside their 25% share of the federal funds for administration and supervision, direct and supportive services for students with disabilities, and monitoring and complaint investigation (IDEA Regulations, 34 C.F.R. § 300.370(a)). However, states may only use 5% of the 25% of federal funds for administrative purposes. Those administrative purposes may include technical

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assistance to local educational agencies, administering the state plan, approval and supervision of local activities, and leadership activities and consultative services (IDEA Regulations, 34 C.F.R. § 300.621). The actual dollar amount of that 5% that may be used for administrative purposes has been capped by the IDEA Amendments of 1997. Increases are tied to the inflation rate or the increase in federal expenditures whichever is less. If inflation is lower than the percentage increase in federal appropriations, states are required to spend the difference on improvements in services to students with disabilities.

Rural school organizations would benefit from oversight efforts that monitor for state agency level compliance of federal regulations for funding distribution and administrative purpose of operations. Lobbying efforts at the state level for efficient and effective agency support of LEAs will assist rural schools maximize the educational services those schools provide their disabled students.

Rural schools will be well served to scrutinize the compliance requirements for each individual disabled student. The IDEA Amendments of 1997 did not change the definition of a child with a disability. However, the definition has been relaxed for children ages 5 through 9. The LEA is no longer required to determine a specific disability for a child between those ages. That was already true for children between the ages of 3 and 5. The state agency and the LEA now have discretion to include 5-9-year-olds who are "experiencing developmental delays" in physical, cognitive, communication, social or emotional, or adaptive development who, by reason thereof, need special education and related services. (Pub. L. 105-17, § 602(3), 111 Stat. 37 (1997).) The Amendment later provides that "nothing in this Act requires that children be *classified* by their disability" so long as the student meets the definition of a child with a disability. (Pub. L. 105-17, § 612(a)(3)(B), 111 Stat. 37 (1997).) Therefore, the LEA is not required to label the student as belonging to a particular disability group.

A program of special education and related services is required under IDEA for all eligible students with disabilities between the ages of 3 and 21. Moreover, states are required to identify and evaluate children from birth to age 21. That is true even if the state does not provide educational services to students with disabilities in the 3-to-5 and 18-to-21 age groups (IDEA regulations, 34 C.F.R. § 300.300, comment 3). However, the duty to provide special education to qualified students with disabilities is absolute between the ages of 6 and 17 (Weber, 1992). States that do not require an education for students with disabilities between ages 3 to 5 and 18 to 21 are not required to educate students in those age groups (IDEA, 20 U.S.C. § 1412(2)(B)). Rural school administrators should know the specific education age requirements in their respective states.

The courts have addressed the issue of when a school's obligation to educate a disabled student ends. The school's obligation to a special education student ends when the student (1) graduates with a diploma, (2) successfully completes an appropriate individualized education program (IEP), or (3) voluntarily drops out of school. (*Wexler v. Westfield*, 1986). A caveat: the graduation cannot be mere pretext for terminating the school district's obligation, however, or the district can be required to provide compensatory education such as educational services beyond the age of 21 (*Helms v. Independent School District #3*, 1985).

The rural school should ensure that only students who meet the requirements of a statutory category of disability qualify for educational services. Those categories are:

> autism, deaf-blindness, deafness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairments, other health impairment, emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment, including blindness. (20 U.S.C. § 1401(a))

The regulations defining the categories can be found at 34 C.F.R. § 300.7(a)(1)-(b)(13). Attention Deficit Hyperactivity Disorder (ADHD) is not a separate category. The Department of

Education (DOE) has recognized ADHD as criteria of eligibility for special education services under the categories of learning disability, serious emotional disturbance, or other health impairment in a joint policy memo. (Joint Policy Memo, 1991) It should also be noted that students with ADHD might also be eligible for services under Section 504 of the Rehabilitation Act of 1973. (Yell, 1998)

Rural school districts must ensure that provisions contained in the IDEA are met in order to provide a free appropriate education for all qualifying students with disabilities. This provision of zero rejection for qualifying students was addressed in the U.S. Court of Appeals for the First Circuit which held that public education is to be provided to all students with educational disabilities, unconditionally and without exception (*Timothy W. v. Rochester, New Hampshire, School District,* 1989).

The IDEA requires that states must assure that all students with disabilities (birth to age 21) who are in need of special education and related services or are suspected of having disabilities and in need of special education are identified, located, and evaluated. (IDEA Regulations, 34 C.F.R. § 300.220). The federal government allows the states to develop their own child find systems (IDEA, 20 U.S.C. § 1414(a)(1)(A)). Rural school organizations should ensure that their interests are represented in the development of and changes to child find policies promulgated by their state agencies.

The IDEA requires that state policies assure all students with disabilities the right to a FAPE. States retain the authority to set standards for FAPE. However, those standards must meet the federal threshold requirements of the IDEA definition of special education which is "specially designed instruction, at no charge to the parents or guardians, to meet the unique needs of a child with a disability" (IDEA, 20 U.S.C. § 1404(a)(16). Those standards must also include the provision of related services, which are any developmental, corrective, or supportive services that students need to benefit from special education (IDEA, 20 U.S.C. § 1404(a)(17)).

State special education standards greatly impact rural schools. Rural schools, as with all public schools, must provide special education and related services to students free of charge. Schools may only collect fees from parents of students with disabilities that are also collected from parents of students without disabilities. If the school district places a student out of the district in order to meet state standards, the home school district remains responsible for the costs of that placement.

State standards may exceed the minimum level of educational services required pursuant to the IDEA. For example, a state may require schools to provide a FAPE that will "assure a student's maximum possible development" (Massachusetts General Law Annotated, 1978). Compliance with such standards imposed by a state may place a heavy burden on the funds and resources of rural school districts. Therefore, rural school organizations must ensure their interests are represented at the state level when special education standards are adopted.

The purpose of federal funding for special education is not to supplant state funding of the program. The IDEA federal funds are required to be used a supplement to state funds for providing special education and related services. The IDEA specifically places supervision of each state's special education program under each state education agency (SEA). Therefore, the state is ultimately responsible for ensuring the appropriate use of state and federal special education funding. School districts are granted authority under the IDEA to use other sources of funding to pay for special education services. (IDEA Regulations, 34 C.F.R. § 300.600(c)).

The 1997 Amendments to the IDEA included a major change in funding special education. The funding formula remains based on the child count until federal appropriations reach $4.9 billion. IDEA funds above $4.9 billion are to be allocated based on a population-based formula. The formula will include an adjustment for poverty rates. The adjustment for excess appropriations will be based on the states population (85%) and poverty level (15%). There is, however a cap and floor limit to the excess

appropriation funding. A state will not receive more than 1.5% above the federal funding received for the previous year, nor will a state receive less federal funds than was received for fiscal year 1997. (Yell, 1998) Rural school organizations should include the funding changes of the 1997 Amendments in their special education and related services budget projections for each year.

A major change in the 1997 Amendments that is likely to involve more litigation in special education cases regards compliance with the new LRE setting. In the prior version of the statue a student's IEP had to state to what extent the child would be able to participate in regular educational programs. The basic preference for education of children with and without disabilities in the same educational setting remains in place. A presumption that the placement will provide education with nondisabled students has been created, however, by the new requirements in the IEP that a justification must be given if the child is not educated with nondisabled students (Pub. L. 105-17 § 614(d)(1)(A)(iv)).

The IDEA requires all schools to have a continuum of alternative placement options to meet the needs of students with disabilities. The regulations state:

(a) Each [school district] shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services
(b) The continuum required . . . must:
(1) Include the alternative placements . . . (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. (IDEA Regulations, 34 C.F.R. § 300.551)

The purpose of the continuum is to allow school personnel to choose from a number of options in determining the most appropriate LRE for the student. If a rural school lacks the resources to comply with the IDEA continuum requirement, the rural school may fill the requirements through alternative placements such as consortium type arrangements. A rural school may find it necessary to send the student to another school (public or private) that provides the needed placement. The sending school retains financial responsibility for the disabled student's education.

It is important for rural school districts to note that the only qualitative standard by the IDEA for providing special education and related services is that standard required by the district's SEA. The main focus of the courts has been to review the procedural protection rights of students under the IDEA. Courts have been reluctant to conduct extensive reviews of challenged IEPs.

The posture of the courts regarding the qualitative standard for the provision of special education and related services is reflected in the *Rowley* decision. In *Rowley*, the parents of a hearing impaired student argued that the school district should provide a sign language interpreter for their daughter. Their argument was based upon the reasoning that the IDEA required the district to maximize their daughter's educational potential.

The U.S. Supreme Court reviewed the legislative history of the IDEA and found no requirement that public schools maximize the potential of each student with a disability. The opportunities provided to each student by their school varied from student to student. The primary purpose of the IDEA was to guarantee access to students with disabilities to allow them to meaningfully benefit from public education. The IDEA protected the right to access by means of its procedural protections, including the annual IEP meetings and review process. Courts limit their inquiry to whether the school has complied with IDEA procedural protections, and whether the IEP was reasonably calculated to enable the student to receive educational benefits (*Bd. of Educ. v. Rowley*, 1982).

A problem that occurs in rural school special education programs is one that involves students moving into the district with educational needs the school is unable to provide. This problem is represented in *Poolaw v. Bishop*. In *Poolaw*, a 13-year-old student with profound deafness moved from Idaho to a small town in Arizona. The Arizona district relied, in part, on the student's records from Idaho in making a placement decision. An identified education requirement in the student's IEP was a full-day immersion program in American sign language. The Arizona district made the determination that the student should be placed in the Arizona School for the Deaf and Blind (ASDB). The ASDB is a residential facility located 280 miles away from the Arizona district.

The student's parents argued two points. (1) The placement selected by the district failed to consider the continuum of educational placements required by the IDEA; and, (2) the placement failed to comply with IDEA's mainstreaming requirement. A hearing officer agreed with the parents, as did the Arizona Department of Education (ADE) upon the school's appeal of the hearing officer's ruling.

The U.S. Court of Appeals, Ninth Circuit, overturned the administrative decisions of the hearing officer and the ADE. The Court held that the Arizona school district relied appropriately on the student's Idaho IEP in reaching its decision. The district had considered alternative placements and reasonably concluded that mainstreaming did not allow the student to receive educational benefits. The Court agreed that the student needed to acquire greater communication skills before the student could receive educational benefits in a regular classroom. The Court held that the ASDB setting was appropriate under IDEA regulations at 34 CFR § 300.522(a)(3) because it was the closest facility at which the student could obtain the services he required. (*Poolaw v. Bishop*, 1995).

Another case, *Yankton School dist. v. Schramm*, presents a caveat to schools who elect to provide special accommodations and related services not included in a student's IEP. In *Schramm*, a student with cerebral palsy and visual impairments was only able to walk slowly with a walker or used a wheelchair for mobility. The student could not function independently in many aspect of personal life. The student was an "A" student and participated in numerous school activities in spite of her disabilities.

The district stated its intentions to dismiss the student from special education prior to the student entering the ninth grade. The school's decision was based on the belief that the student no longer required special education services under the IDEA. The hearing officer found that the student achieved her good grades and participated in the school activities because of the special accommodations and related services provided by the school.

The school district appealed to the U.S. Court of Appeals, Eighth Circuit. The Court ruled that the student's grades would be adversely affected if the school did not continue to provide the accommodations and related services in question. Moreover, the Court found that the district had failed to incorporate the services it was providing the student into its written IEP and her need for the related services had not ended. The Court held that the student would be entitled to receive transition services from the school district until the age of 21 or her graduation date (*Yankton School Dist. v. Schramm*, 1996).

Courts have shown they will take a school district's resources into consideration in making a special education or related services ruling. The Eighth Circuit Court held that an Iowa student who had suffered a spinal cord injury was entitled to continuous one-on-one nursing services as related services under the IDEA because the school district's nurse could provide the services (*Cedar Rapids Community School dist. v. Garret F.*, 1997).

The Sixth Circuit Court held that the hiring of a full time licensed practical nurse was inherently burdensome to the school district because the individual performing the services (frequent suctioning of the student's tracheotomy) would have to be available at all times. The Court held the services were an

excluded medical service under the IDEA (*Neely v. Rutherford County Schools*, 1995.) Similarly, in a ruling from the Eastern District of Pennsylvania, the Court held that a factor a school district may take into account in placement of a disabled student is the impact the proposed placement would have on limited educational and financial resources of the district (*Cheltenham School Dist. v. Joel P. by Suzanne P.*, 1996).

The purpose of the IDEA applies to all public schools receiving federal funds in the United States. Rural school districts must ensure that all students within in their districts have available to them a FAPE which emphasizes special education and related services designed to meet their unique needs (IDEA, 20 U.S.C. § 1400(c)). In order for rural school districts to provide a FAPE to students with disabilities, rural school districts must ensure their interest are represented when their SEA promulgates special education policy for their state. Particularly, the qualitative standard adopted by the SEA must be a standard with which rural schools can comply as well as urban schools in the state.

Rural school districts must also ensure their districts receive the mandated funding allotment required by the IDEA. Rural school organizations should be involved in lobbying for appropriate funding decisions at the SEA level as well. Rural schools must be aware of the major funding changes that may impact their districts as a result of the 1997 Amendments to the IDEA. The districts must ensure their interests are represented regarding accurate accounting of state's population and poverty level - the criteria used in funding formula adjustments.

Finally, it is important rural school districts to monitor case law regarding special education and related services standards applied by the courts for schools in similar conditions. Rural schools must meet the qualitative standard of special education set by their SEA while carefully scrutinizing educational and related services offerings that are not in the students IEP. Providing a FAPE in any school setting will remain a dynamic challenge in special education in the United States. The impact on rural schools in meeting that challenge may be attenuated due to the limitations on funding and resources commonly found in those districts.

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